

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.19494 of 2007

Between:

K.Lazar

...Petitioner

And

Industrial Tribunal-cum-Labour Court,
Ananthapur, rep. by its Presiding Officer and others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 30.11.2017

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.19494 of 2007

% 30.11.2017

K.Lazar

...Petitioner

VERSUS

\$ Industrial Tribunal-cum-Labour Court,
Ananthapur, rep. by its Presiding Officer and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri G.Ravi Mohan
^ Counsel for Respondent No.1: G.P. for Labour
^ Counsel for Respondents 2 and 3: A.Rama Rao

? Cases referred:

1. (2015) 2 SCC 610
2. (2009) 15 SCC 620
3. (2007) 4 SCC 627
4. (2005) 3 SCC 254
5. (2006) 6 SCC 187
6. 2001 (3) ALD 512 (DB)
7. 2001 (5) ALD 427 (FB)
8. 2011(1) ALD 713
9. 2008 (6)ALD 518
10. 1997(2) ALD 558
11. AIR 1964 SC 477

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.19494 of 2007

ORDER:

Award dated 17.7.2004 passed in I.D.No.359 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Ananthapur is under challenge in the present writ petition.

2. The petitioner herein joined in A.P. State Road Transport Corporation as a Conductor on 2.7.1986. Pursuant to a check conducted on 18.7.2001, the disciplinary authority issued a charge sheet on 26.7.2001, framing the following charges.

“(i) For having collected an amount of Rs.72.00 (4 x 18 = 72) for 18 rice bags each contains 50 kgs unaccompanied luggage and failed to issue tickets and without permit while you were conducting the vehicle on route Badvel to Nellore which constitutes misconduct under Regulations 28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963.

(ii) For having failed to close the S.R. of all denominations except Rs.3.00, Rs.4.00, 5.00 upto stage No.2 which constitutes misconduct under Regulation 28 (xxxii) of APSRTC Employees (Conduct) Reg. 1963”.

3. In response to the said charge sheet and the charges contained therein, petitioner submitted an explanation and thereafter an enquiry officer was appointed, who submitted a report on 24.9.2001. Thereafter, subsequently on 13.11.2001, a show cause notice of removal was issued and the petitioner submitted his explanation. The 3rd respondent/disciplinary authority vide proceedings dated 27.11.2001, terminated the petitioner from service. After unsuccessfully availing

departmental remedy of appeal, petitioner raised I.D.No.359 of 2002 before the Tribunal under Section 2A(2) of the Industrial Disputes Act, 1947. The Tribunal vide award dated 17.7.2004 dismissed I.D.No.359 of 2002. In the above background, the present writ petition came to be filed.

4. Heard Sri G.Ravimohan, learned counsel for the petitioner and Sri Aravala Rama Rao, learned Standing Counsel for Respondent Corporation, apart from perusing the material available before the Court.

5. Submissions/contentions of the learned counsel for the petitioner

- (1) The disciplinary authority in an arbitrary and illegal manner, terminated the petitioner herein from service without even considering the explanation offered by the petitioner in response to the charge memo.
- (2) The award of the Labour Court is also without any basis and foundation.
- (3) The Tribunal dismissed the I.D. on the basis of presumptions and assumptions.
- (4) The Tribunal failed to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947.
- (5) The punishment imposed on the petitioner is disproportionate to the charges levelled against him.
- (6) No statements of the passengers were recorded nor the officials of the Respondent Corporation checked the Bus cash.
- (7) The owner of the luggage P.Anki Reddy deposed that he did not pay any amount to anybody and there is no reason to discredit the said statement in the absence of any cross-examination.

(8) The Tribunal grossly erred in drawing presumptions against the petitioner without any basis.

6. Submissions/contentions of Sri Aravalli Rama Rao, learned Standing Counsel for A.P. State Road Transport Corporation

(1) There is no illegality nor there is any perversity in the impugned award and in the absence of the same, the questioned award is not amenable to any judicial review under Article 226 of the Constitution of India.

(2) In view of the admission made by the petitioner in the spot explanation dated 18.07.2001 as to the collection of amount towards the luggage, the disciplinary authority correctly exercised its discretion and terminated the petitioner from service and only after considering the same, the Tribunal refused to interfere with the order of termination passed by the Disciplinary authority.

(3) In the absence of any perversity in the action of the disciplinary authority as confirmed by the Tribunal, the interference of this Court under Article 226 of the Constitution of India is not warranted.

In support of his submissions and contentions, learned Standing Counsel places reliance on the judgments of the Hon'ble Apex Court in *UNION OF INDIA AND OTHERS v. P.GUNASEKARAN*¹, *CHAIRMAN – CUM- MANAGING DIRECTOR, COAL INDIA LTD. & ANR v. MUKUL KUMAR CHOUDHARI & ORS*², *U.P.S.R.T.C v. RAM KISHAN ARORA*³, *DIVISIONAL CONTROLLER,KSRTC, (NWKRTC) v. A.T. MANE*⁴, *DIVISIONAL CONTROLLER, N.E.K.R.T.C. v. H. AMARESH*⁵ and the Judgments of this Court in *V.J.RAMULU v. HON'BLE LABOUR COURT*,

¹ (2015) 2 SCC 610

² (2009) 15 SCC 620

³ (2007) 4 SCC 627

⁴ (2005) 3 SCC 254

⁵ (2006) 6 SCC 187

ANANTAPUR AND ANOTHER⁶ and V. RAMANA v. APSRTC AND OTHERS⁷.

7. The Tribunal framed the following points for consideration:

- (1) Whether the findings of the Enquiry Officer are based on record? and
- (2) Whether the punishment is grossly disproportionate to the proved misconduct?

8. Before the Tribunal, the parties did not adduce either oral or documentary evidence. During the course of domestic enquiry, the enquiry officer recorded the statement of one Mr.P.Anki Reddy, owner of the luggage. It is not in dispute that the said Anki Reddy in clear and vivid manner deposed that he did not pay any amount to any body towards luggage. It is also significant to note that the Respondent/Management did not cross-examine the said Anki Reddy nor elicited anything in favour of the Corporation and against the petitioner herein. This Court does not find any valid reason for the Tribunal to discredit the said statement of P.Anki Reddy in the absence of any cross-examination of the said person. It is also pertinent to note that the Corporation authorities did not find any excess cash nor there is any evidence to prove the same nor the Management recorded the statements of the passengers in the Bus. The Tribunal had drawn presumption at paragraph 4 of the award that the petitioner must have collected Rs.72/- towards luggage fare and by drawing such presumption against the petitioner and basing on the same, the Tribunal held that the petitioner collected Rs.72/- towards luggage, thereby confirmed the punishment imposed by the disciplinary authority. The Tribunal also did not record any valid reason to discredit the statement of

⁶ 2001 (3) ALD 512 (DB)

⁷ 2001 (5) ALD 427 (FB)

the owner of the luggage when the fact remains that he was not cross-examined by the Respondent Management. In this context, it may be appropriate to refer to the judgments cited on behalf of the petitioner.

9. In *S.L. NARSAIAH S/O. S.R.R. NARSAIAH v. ADDL. INDTL, TRIBNL.-CUM-ADDL. LABOUR COURT AND THE DEPOT. MANAGER, A.P.S.R.T.C.*⁸, this Court at paragraphs 7 to 10 held as under:

“7. In the disciplinary proceedings, basically it is for the employer or the management to prove the charges framed against an employee. The mere fact that the employee did not adduce any evidence does not become material. Further it would be mostly in the form of rebuttal evidence. Therefore, much would depend upon the strength of the evidence which the employer maintained.

8. In the instant case, the allegation against the Petitioner is that he collected fare from a batch of four passengers and did not issue tickets. The best persons to speak about this would have been the passengers themselves. Recognising the difficulty in securing the presence of the passengers in departmental proceedings, courts virtually exempted the Corporation from that necessity. The other relevant evidence would be that of the checking officials themselves, notwithstanding the fact that they may be prone to stick to their version. In the case on hand, the Corporation did not choose to examine the checking officials. M.W.1 is the Controller and M.W.2 is the Typist. None of them are members of the checking team.

9. The documentary evidence is nothing but the record of the disciplinary proceedings against the Petitioner. The result is that there was no evidence worth its name, to prove the charges against the Petitioner. Therefore, the Award passed by the Labour Court cannot be sustained in law. Consequently, the order of removal passed against the Petitioner by the 2nd Respondent deserves to be set aside.

10. Inasmuch as the writ petition is being allowed mostly on account of the failure of the Respondents to adduce independent evidence, this

⁸ 2011(1) ALD 713

Court is of the view that the relief of re-instatement with continuity of service and attendant benefits but without back wages can be granted.”

10. In *C. BASAIAH v. DEPOT MANAGER, APSRTC*⁹, this Court at paragraphs 8 to 10 held as under:

“8. Though it is a matter of record that by the time the check took place, two passengers were found without ticket, the circumstances leading thereto, cannot be ignored. Even this limited consideration is not about the correctness of the finding, but the circumstances that led to it. The petitioner had enclosed a copy of the statement recorded from the passengers, at the time of check. It is to the effect that both of them tendered fare of Rs. 2/- each, to the petitioner, but the latter insisted on payment of 0-50ps. each, more. It was stated that even while they were searching for the change, Kudurumalla Stage had reached and the check took place. They stated that the checking officials have collected the balance of amount and issued tickets. There is nothing on record to show that any penalty was levied on the passengers.

9. The facts mentioned above would have their own impact, upon the charges framed against the petitioner. Though technically, the passengers were found without tickets, the gravity thereof gets diluted to a substantial extent, if the explanation offered by them is taken into account. Here again, the examination is with reference to the quantum of punishment.

10. The duties assigned to the Conductor carry with them, an amount of trust, on behalf of the Corporation. Irrespective of the amount involved, the intention of a person employed as a Conductor, while dealing with the tickets and cash, assumes importance. The judgment of the Supreme Court relied upon by the Labour Court is clear on this aspect. At the same time, it must not be forgotten that, as part of the duty, the Conductor has to issue tickets to hundreds of persons everyday, and a small lapse, which does not reflect misuse of faith, cannot lead to deprivation of livelihood. An element of human rights

⁹ 2008 (6)ALD 518

also exists, in the matters of this nature. It is not only the livelihood of the employee, but also that of his family members and dependants. While there cannot be any compromise with the requirement as to honesty in discharge of duties, minor lapses should not lead to deprivation of livelihood to an employee and his family. Before the service of an employee, running into few decades, is put an end to, a careful analysis of the matter is needed.”

11. In *S.PULLA REDDY v. DEPOT MANAGER, APSRTC, CUDDAPAH DISTRICT AND ANOTHER*¹⁰, this Court at paragraphs 10 and 11 held as under:

“10. As regards non-verification of cash, when a question was put to the Inspector in his cross-examination by the workman the Inspector replied that "we have not checked the bus cash since the bus had to proceed to Dobbudupalli". This is an evasive reply. In my opinion, the Inspector should have himself insisted upon the cash verification which could have put a conclusive seal on the guilt of the workman, but by not doing so the alleged misconduct has become susceptible to an enormity of doubt.

11. It is this situation, which makes it incumbent upon us to take a liberal view and to hold that the punishment of removal from service was quite harsh and disproportionate to the gravity of the misconduct.”

Coming to the Judgments cited by the learned Standing Counsel.

12. In *UNION OF INDIA AND OTHERS (supra 1)*, the Hon'ble Apex Court, at paragraphs 12 and 13, held as follows:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not

¹⁰ 1997(2) ALD 558

venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). Interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). Go into the adequacy of the evidence;
- (iv). Go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). Correct the error of fact however grave it may appear to be;
- (vii). Go into the proportionality of punishment unless it shocks its conscience."

13. In *CHAIRMAN –CUM- MANAGING DIRECTOR, COAL INDIA LTD. & ANR (supra 2)*, the Hon'ble Apex Court at paragraph 13, held as follows:

“13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the Inquiry Officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.”

14. In *U.P.S.R.T.C (supra 3)*, the Hon’ble Apex Court, at paragraph No.7, held as follows:

“7. The High Court has not arrived at the conclusion that the quantum of punishment imposed upon the respondent was disproportionate to the gravity of his misconduct. Even in such a situation, the course which would have been ordinarily open to the High Court was to remit the matter to the employer for reconsideration of the question in regard to the quantum of punishment. The High Court without assigning any reason could not have substituted its opinion to that of the disciplinary authority.”

15. In *DIVISIONAL CONTROLLER,KSRTC, (NWKRTC) (supra 4)*, the Hon’ble Apex Court, at paragraphs 12 and 13, held as follows:

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

13. This Court in the case of *B.S. Hullikatti (supra)* held in a similar circumstances that the act was either dishonest or was so

grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment.”

16. In *DIVISIONAL CONTROLLER, N.E.K.R.T.C. (supra 5)*, the Hon’ble Apex Court, at paragraphs 17 to 20, held as under:

“17. The order of reinstatement passed by the Labour Court and its affirmation by the High Court is contrary to the law declared by this Court in (2001) 2 SCC 574 wherein it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. As already noticed, this view was reiterated by a 3 Judges Bench of this Court in the Regional Manager, RSRTC case (*supra*).

18. In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corpn. Vs. B.S. Hullikatti, (2001) 2 SCC 574 was also relied on in this judgment among others.

Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

19. In this context, it is useful to refer to the findings of the domestic tribunal which has already been extracted above in paragraph (supra). Before the Inquiry Officer Exh. M1-M4 were marked, which have not been refuted nor was the veracity of witness decided. The Inquiry Officer has stated that he has carefully examined the evidence of MW.1 and the documents marked which fully reveals that the delinquent has committed not only misconduct but misappropriated the cash. MW 1 was not cross examined by the delinquent employee. In reply, the delinquent has simply denied the charges stating it baseless. The Inquiry Officer, on a careful consideration of all aspects of the case, unhesitantly held that the delinquent was guilty of the charges and that all the charges have been proved.

20. Once a domestic Tribunal based on evidence comes to a particular conclusion normally it is not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal.”

17. In *V.J.RAMULU (supra 6)* this Court, at paragraphs 6 and 7, held as follows:

“6. Yet again, recently in a judgment by the Apex Court on 22-1-2000 in *Kamataka State Road Transport Corporation v. B.S. Hullikatti*, (1) AIR 2000 SCW 593 held:

"On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

7. In this case, the appellant herein was found to be guilty of commission of misconduct which is systematic in nature and thus it is not a case where the right of the employer in awarding the punishment can be said to be an irrational one warranting interference by the Labour Court in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act."

18. In *V. RAMANA (supra 7)*, this Court at paragraph No.6, held as follows:

“6. For the purpose of answering the questions referred to by the learned Judge, we are of the opinion that the matter has to be considered from the point of view that this Court in such matters has a limited role to play. In terms of Section 11-A of the Industrial Disputes Act, the Labour Court/ Industrial Tribunal has been conferred wide power to consider as to whether the punishment imposed upon a delinquent-workman is legal or justified or not but has also been conferred with power to award a lesser punishment in the event it is held that the punishment imposed is not proportionate to the gravity of misconduct charged against the delinquent-workman. However, the jurisdiction of the High Court to interfere with the quantum of punishment is limited. In Tata Cellular v. Union of India, JT 1994 (4) SC 52 = (1994) 6 SOC 651, relying upon the decision in Council of Civil Service Unions v. Minister for Civil Service, (1984) 3 All.ER 935, the Apex Court while holding that the Court can interfere only when there was illegality, irrationality or procedural impropriety on the part of the authorities in its decision making process, however, had not expressed any opinion about the development of the law in the field of doctrine of proportionality. The said question came up for consideration before the Apex Court in Union of India v. G. Ganayutham, . The Apex Court held that the doctrine of proportionality is at par with the doctrine of Wednesbury's unreasonableness and unless it is held that the punishment imposed upon the delinquent officer is so irrational as to shocks one's conscience and that no reasonable man while reasonably exercising his power would impose the same, the High Court cannot interfere therewith. It was stated:

In such a situation, unless the Court/ Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi case that the Court might - to shorten litigation - think of substituting its own view as

to the quantum of punishment in the place of the punishment awarded by the competent authority.”

19. In the instant case, it is not in dispute that the spot explanation of the petitioner was recorded on 18.07.2001. While referring to the said spot explanation dated 18.07.2001, it is the submission of the learned Standing Counsel for the respondent organisation that in view of the admissions contained therein as to the collection of the amount by the petitioner, there is no perversity in the impugned order passed by the Disciplinary Authority as confirmed by the Tribunal and the said finding of fact cannot be disturbed by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. A copy of the said explanation is produced before this Court during the course of hearing.

20. A perusal of the said spot explanation shows that it does not indicate that the petitioner herein collected the amount for the luggage. The entire case of the Management mostly depends on the spot explanation, but as stated supra the same does not contain any admission of the petitioner as to the collection of amount. On the other hand, the said statement shows that the petitioner thought that the amount to be collected being Rs.4/- per bag. He also said that no tickets were issued. The Management proceeded with the impugned action obviously on the basis of spot explanation recorded soon after the incident.

21. Another important aspect which needs mention in this context is that the officials of the respondent Corporation who conducted the raid did not make any endeavour to check the cash also. It is also required to be noted that at the time of check all the passengers in the bus were given tickets and the same is not in dispute. In fact, the above aspects missed the

attention of the Tribunal while arriving at the conclusions in the impugned award. In the considered opinion of this Court the conclusions arrived at by the Disciplinary Authority are completely devoid of any supporting material and without any evidence.

22. In *UNION OF INDIA AND OTHERS (supra 1)*, the Hon'ble Apex Court laid down certain guidelines for exercising the jurisdiction under Article 226 of the Constitution of India. The instant case also falls under guidelines (d) to (i) of paragraph 12 of the said judgment.

23. The Judgment of the Hon'ble Apex Court in *CHAIRMAN-CUM-MANAGING DIRECTOR, COAL INDIA LTD. & ANR (supra 2)* would not render any assistance to the respondents as in the said reported case the delinquent admitted the charges unlike in the present case.

24. Having regard to the factual variations in the Judgments in *DIVISIONAL CONTROLLER, KSRTC, (NWKRTC) (supra 4)*, *DIVISIONAL CONTROLLER, N.E.K.R.T.C. (supra 5)*, *V.J.RAMULU (supra 6)* and *V. RAMANA (supra 7)*, the same would also not be helpful to the respondents.

25. Petitioner in the present case is now aged about 52 years and the present writ petition came to be instituted in the year 2007, as such, this Court is not inclined to remand the matter to the Tribunal for reconsideration on the quantum of punishment.

26. It may also be appropriate to refer to the Judgment of the Hon'ble Apex Court in *SYED YAKOOB VS K.S. RADHAKRISHNAN AND ORS*¹¹ wherein the Hon'ble Apex Court at paragraph No.7, in clear and

¹¹ AIR 1964 SC 477

unequivocal terms, ruled that if a finding of fact is based on no evidence, the same would be regarded completely as error of law which can be corrected by a Writ of Certiorari.

27. In the instant case also the Disciplinary Authority as well as the Tribunal proceeded on the assumption that the petitioner/workman admitted the allegation of collection of amount in the spot explanation, but as mentioned supra, the same is otherwise. It is also required to be noted that the Tribunal also did not make any endeavour to exercise jurisdiction under Section 11-A of the Industrial Disputes Act, 1947. In the absence of any evidence as to the collection of excess amounts, the Tribunal ought to have exercised its power and jurisdiction under Section 11-A of the Act.

28. For the aforesaid reasons and having regard to the principles laid down in the judgments cited by the learned counsel for the petitioner, the writ petition is allowed, setting aside the Award dated 17.7.2004 passed in I.D.No.359 of 2002 on the file of the Industrial Tribunal-cum-Labour Court, Ananthapur and the order of punishment is modified to that of reinstatement with continuity of service, attendant benefits and half of the back wages. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 30.11.2017
DA

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



30.11.2017

DA/grk